or other schemes of service has been forced to work overtime. The type of work which the respondent did, according to his own evidence, involved long periods of standing by doing nothing, i.e., the actual work he had to do was of much shorter period than 8 hours. It was the nature of the work which persuaded him to continue under the terms and conditions of his service. He himself has said that he made no protest, no complaint, nor did he want to alter his terms of service. It seems apparent from the history of the case that his claim was purely prompted by his having been asked to resign from the employment. However this court need not make any finding on why he left employment. The question is whether on the principle laid down in *Eastern Mining & Metals Co. Sdn. Bhd.* v. *M.M. Ismail & Ors.* he could now claim overtime. The answer must be in the negative. So, even if the Labour Officer was correct in his decision that overtime allowances were due to the respondent it is quite apparent that the Respondent has received much more than his entitlement of $2,865.11 (the Labour Officer's award) and hence the appeal must succeed.

The appeal is therefore allowed and the Labour Officer's Order of October 13, 1973, set aside with costs.

Appeal allowed.

Solicitors: *Ranjit, Thomas & Kula; Ariffin & Co.*

KANNAPPA CHETTIAR v. VELLASAMY PILLAI

[O.C.J. (Mohamed Azmi J.) August 25, 1976]
[Kuala Lumpur — Civil Suit No. 551 of 1973]

Practice & Procedure — Order by consent — Application to set aside order — Plaintiff not a party to the consent order.

In the 1947 case, the defendant claimed a lien of P.R.N.N Firm's documents until full and complete payment of his salary owed to him by the said firm had been made to him. By a consent order dated May 24, 1948, made between P.R.N.N. Firm and the defendant, the defendant agreed to abandon his lien over the documents and in place thereof had agreed to accept a lien over the three parcels of land as security for his counterclaim (for payment of his salary). When the 1947 case finally came out for final disposal, judgment was given in favour of the defendant in his counterclaim. Consequently, he proceeded to enforce the judgment by filing an application to sell the three parcels of land given as security by the firm vide the consent order of May 24, 1947.

The plaintiff sought for a declaration that the said consent order was no longer operative and the defendant had no right of lien over the three land titles. At the material time, the plaintiff was only acting as attorney for P.R.N.N. Firm and was never a party to the consent order. The plaintiff became the registered owner of the property only after March 1, 1949. When the titles were originally deposited with the defendant they were registered in the name of one Subramanian.

Held, dismissing the plaintiff's claim: (1) the plaintiff had no *locus standi* to initiate the present suit in his personal capacity;

(2) although an order by consent is not a contract, it is sufficient evidence of the contract upon which it is based, and such contract is not less a contract and subject to the incidents of a contract because there is superadded the command of a judge. A judgment by consent is binding until set aside, and acts as an estoppel.

Cases referred to:-

(1) *Mohamed Salleh* v. *Lau Siok Kee* [1974] 1 M.L.J. 102 F.C.

(2) *Kinch* v. *Walcott & Ors.* [1929] A.C. 482.

CIVIL SUIT.

Morris Edgar for the plaintiff.

M. Mahalingam for the defendant.

Mohamed Azmi J.: This is a claim by KN.PR. Kannappa Chettiar for a declaration that the order of Russell J. dated May 24, 1948 in Kuala Lumpur High Court Civil Suit No. 62 of 1947 (hereinafter referred to as "the 1947 case") is no longer operative and that the defendant has no right of lien over the titles of the land held under C.T. No. 8691 and E.M.R. No. 2640 both in the Mukim and District of Batang Padang and E.M.R. No. 5000 (now 2760) in the Mukim of Durian Sebatang District of Lower Perak, and that the same should forthwith be returned by the defendant or his solicitors to the plaintiff.

The brief facts of this case are as follows. On October 31, 1947 soon after the Japanese Occupation, one moneylending P.R.N.N. Firm, of which the present plaintiff was the attorney, filed the 1947 case against the present defendant as first defendant, and one Periyakaruppan Chettiar s/o Arunasalam Chettiar as second defendant — the former being a clerk and the latter as agent of the firm. Various reliefs were sought against the two defendants relating to the business of the P.R.N.N. Firm which included the taking of accounts and, in particular, an order was sought against the first defendant (hereinafter referred to as "the present defendant") to deliver to the firm account books, documents of titles and negotiable instruments belonging to the firm. These documents were kept in a box, locked by a padlock in the firm's premises, but the key to the padlock was kept by the present defendant. In his defence in the 1947 case, the present defendant contended that P.R.N.N. Firm and its three subsidiaries owed him $9,292.77 as salary, bonus and expenses, and that he was entitled to a lien over the firm's documents which were in his constructive possession until full and complete payment was made to him. In the event, he counterclaimed against the firm for the sum of $9,292.77. In order to obtain its documents before the final disposal of the 1947 case, P.R.N.N. Firm by Summons-in-Chambers dated May 11, 1948 made an interlocutory application under section 499 of the then Civil Procedure Code; and on May 24, it obtained a consent order from Russell J. for the delivery by the present defendant of the account books, documents of titles, etc., which formed part of the subject-matter of the 1947 case, upon the firm furnishing him with certain security. The relevant part of the consent order affecting the present defendant reads as follows:

"*IT IS ORDERED* that the 1st defendant abovenamed do deliver to the plaintiff herein the books of account, documents of title and negotiable instruments forming the subject matter of this suit upon the plaintiff furnishing security to the 1st defendant as contained in the letter from the plaintiff's Solicitors to the 1st defendant's Solicitors dated April 5, 1948" (See Exhibit AB49).

Some time on August 12, 1948, pursuant to the consent order, P.R.N.N. Firm deposited with the present defendant through their respective solicitors the

requisite securities, namely the three titles as enumerated in the letter of the firm's solicitors dated April 5, 1948 — the subject-matter of the present case. The present defendant, however, failed to hand over to the firm the key to the padlock of the box where the documents were kept. After due warning in writing to the present defendant's solicitors, the box was forced open and a new padlock was replaced by the firm's attorney. Arising out of the firm's action in forcing open the box, the present defendant took out contempt proceedings against the firm's attorney, who is the plaintiff in the present case. The motion was dismissed by Russell J. and his grounds of judgment can be found in Exhibit AB53. The present defendant appealed against that decision, but as he failed to furnish the requisite deposit for costs, his appeal stood dismissed.

When the 1947 case finally came out for final disposal on February 23, 1971, P.R.N.N. Firm's claim was dismissed, but the present defendant succeeded in his $9,292.77 counterclaim. The present defendant proceeded to enforce the judgment by filing an application to sell the three parcels of land given as security by the firm vide the consent order dated May 24, 1947. It is arising out of this application by the present defendant for execution, that the plaintiff has brought the present action for a declaration that the said consent order is no longer operative and that the present defendant has no right of lien over the three land titles. It is submitted by Mr. Morris Edgar on behalf of the plaintiff that it is on the strength of the consent order that a lien on the three land titles was granted to the present defendant, and in view of the defendant's failure to comply with the said order, he has not only abandoned his lien but has also been guilty of abusing his lien; and, as such, the consent order is no longer operative. Mr. Mahalingam for the present defendant, however, argues that the defendant's lien in the three title deeds is still enforceable on two main grounds. Firstly, it is submitted that the present plaintiff was not the plaintiff in the 1947 case. Secondly, pursuant to Order of Court dated May 24, 1948, the furnishing of security to the defendant was, "as contained in the letter from the plaintiff's solicitors to the defendant's solicitors dated April 5, 1948", and that the said letter refers to previous correspondence. It is contended that from the previous correspondence as contained in Exhibits AB5 to AB10, and the affidavit of the present plaintiff in support of the Summons-in-Chambers (Exhibit AB2), it was the intention of the firm to give the said security for the payment of the defendant's counterclaim.

Having considered the evidence in this case and the written submissions of both counsel, it is my finding that the present claim has no merit both in law and in fact. On the first defence brought by Mr. Mahalingam, it is clear that the present plaintiff, Mr. KN.PR. Kannappa Chettiar is a stranger to the 1947 case. The consent order dated May 24, 1948 was made between P.R.N.N. Firm and the present defendant. From the records, I find the present plaintiff was only acting as attorney for P.R.N.N. Firm. He was thus never personally a party to the consent order and, as such, he has no *locus standi* to initiate the present suit in his personal capacity. Although an order by consent is not a contract, it is sufficient evidence of the contract upon which it is based, and such contract is not less a contract and subject to the incidents of a contract because there is superadded the command of a judge. (See White Book 1962 Volume I page 2006). In my view, this also applies to an interlocutory order obtained by consent. Since the present plaintiff is not personally a party to the consent order, it follows that he is not the proper party to apply for the declaration sought for in this case. (See *Mohamad Salleh* v. *Lau Siok Kee* [1]). Further, a judgment by consent is binding until set aside, and acts as an estoppel. (See *Kinch* v. *Walcott & Ors.*[2]). Being a stranger to the judgment, the plaintiff has no right to set it aside in his personal capacity. On this point, it is submitted by Mr. Morris Edgar that because the property in the three title deeds deposited with the present defendant now belongs to the plaintiff, he is the only person who can file a suit. It should be noted that when the titles were originally deposited with the present defendant they were registered in the name of one M.P.R. Subramanian. The plaintiff in the present case became the registered owner of the property only after March 1, 1949. It is interesting to note that at all material times the titles are in the possession of the present defendant as security for his counterclaim. On February 23, 1949, i.e. well after the contempt proceedings were over, the then solicitors for the firm wrote to the solicitors of the present defendant requesting them to deliver the three titles to them for the purpose of transferring the property to the present plaintiff, and in that letter it was specifically stated that the plaintiff undertook upon completion of registration of the transfers to re-deposit the titles with the present defendant upon the same terms and conditions as those under which they were being held by the present defendant. (Exhibit AB30). The present defendant did comply with the request; and after the completion of the transfers, the titles were in fact re-deposited with the present defendant. Under the circumstances, I am inclined to agree with the submission of Mr. Mahalingam that the present plaintiff is estopped from denying the fact that he became the registered owner of the said titles upon his personal undertaking through his solicitors to abide by the same terms and conditions as those under which they were originally held by the present defendant namely as security for the present defendant's counterclaim. Thus, even if it were true that the present plaintiff is the only person who can file the present suit, he cannot deny knowledge of the purpose of the titles being deposited with the present defendant, and I hold that he is bound by his undertaking through his solicitors.

As regards the second defence, it is true that the present defendant has failed to comply with the consent order dated May 24, 1948, in the sense that he did not personally hand over the documents to P.R.N.N. Firm. But to my mind, the fact remains that the firm did in fact get possession of the documents, albeit by force. In so doing, I am of the view that the consent order has in effect been complied with. By its action and conduct, it is implicit that the common intention of P.R.N.N. Firm and the present defendant is to comply with the object of the consent order, namely to give the present defendant a lien of the three parcels of land instead of the firm's documents in the box pending the outcome of the counterclaim. It is dif-

ferent if the firm never got possession of the documents as envisaged in the consent order. In this case, the firm in fact got what it had bargained for. The consent order was never revoked or discharged since 1948 and, as such, I hold it is still binding on the firm and the present defendant. It should be observed that in the 1947 case, the present defendant claimed a lien of the firm's documents for his counterclaim. By the 1948 consent order, the present defendant had in effect agreed to abandon his lien over the documents and in place thereof had agreed to accept a lien over the three parcels of land as security for his counterclaim. Having succeeded in his counterclaim, I am of the view that he is legally entitled to realize the fruit of his judgment by applying to court to sell the property, the titles of which have been voluntarily deposited with him at all material times as security. If that were not the intention, it is incomprehensible why the present plaintiff after acquiring the property as registered owner, should re-deposit the titles with the present defendant upon the same terms and conditions by which they were originally deposited. By re-depositing the three title deeds with the present defendant, and by giving the undertaking as contained in Exhibit AB30, it seems obvious to me that at all material times both the firm in the 1947 case, and the present plaintiff, had by their conduct rightly took the position that the order by consent was binding and that the present defendant had a lien over the land titles, notwithstanding the failure on the part of the present defendant to give the padlock key to the firm personally. They only changed their position about 22 years later, i.e. in February 1971, after judgment on the counterclaim was entered in favour of the present defendant. After such a long period, I do not think the firm or the plaintiff should be allowed to argue that the failure on the part of the present defendant to hand over the key personally renders the consent order inoperative and disentitles him to the lien on the title deeds.

Having regard to all the circumstances, I am of the view that this is not a proper case in which the court should grant the declaration sought by the plaintiff. I would therefore dismiss this claim with costs.

Claim dismissed.

Solicitors: *Morris Edgar & Co.*; *Mahalingam & Co.*

LIM CHENG CHIAT v. LIM IMM

[A.C.J. (Wan Suleiman F.J.) October 10, 1976]
[Kuala Lumpur — Civil Appeal No. 24 of 1973]

Landlord and Tenant — Rent controlled premises — Rent unlawfully increased — Notice to quit issued — Whether valid — Control of Rent Act, 1966, ss. 16(1)(a) and 16(5).

The respondent sued for vacant possession of a rent-controlled premises on the ground that the appellant was in arrears of rent. The appellant denied that he was in arrears of rent and, *inter alia*, contended that the rent at $270 per month was unlawful and that the notice to quit was bad in law. The court below held that the increase in rent unilaterally imposed was unlawful. The question raised was whether there could be rent in arrears where there was a demand for an unlawful sum.

Held, dismissing the appeal: (1) even though there had been a demand on the premises of a larger and unlawful sum, the appellant was bound to pay the rent lawfully due i.e. $220/- per month, and arrears of such rent would entitle the respondent to invoke the aid of section 16(1)(a) of the Control of Rent Act, 1966;

(2) the notice to quit was good even though it was issued consequent upon the demand for rent in excess of the lawful rent.

Cases referred to:-

(1) *Pritam Kaur* v. *Rajaratnam & Anor.* [1970] 2 M.L.J. 109.

(2) *Annamalai Chettiar* v. *Yeoh Kee Tin* [1957] M.L.J. 9.

CIVIL APPEAL.

R. Ponnudurai for the appellant/defendant.

R. Chelliah (*Wong* with him) for the respondent.

Wan Suleiman F.J.: This is an appeal against the decision of the learned Senior President of the Sessions Court, Kuala Lumpur. The respondent in this appeal (the plaintiff in court below) sued for vacant possession of premises No. 224, Jalan Ampang, Kuala Lumpur on the ground that the appellant/defendant was in arrears of rent from June 1968 to September 1971. Respondent however limited his claim to $10,000 to bring his case within the jurisdiction of the Sessions Court. Appellant denied that he was in arrears of rent and *inter alia*, contended that the rent at $270 per month as alleged by the respondent was unlawful, and that therefore the notice to quit was bad in law.

It is not disputed that the premises was subject to the Control of Rent Act, 1966. The parties are brothers. Respondent became tenant of the premises during the Japanese Occupation, moved out some time in 1945, after which the defendant moved in, but paid rent in the name of the respondent.

In March 1966 respondent purchased the premises and appellant was attorned tenant. Rent during the Occupation period was $30 per month but it was gradually increased to $220 a month sometime in January 1961 (see D18). Sometime in 1970 or 1971 Quit Rent was raised from $2 to $879 per annum whereupon respondent decided to increase rent to $270 a month, though appellant refused to agree. Respondent alleged that appellant paid rent occasionally but never in full — sometimes $100, sometimes $200 and at other times $300, so that in all he paid "$1000 over" during the material period.